IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

AS.No. 17 of 1998(B)

OS.758/1994 of ADDL.SUB COURT,PARAVUR
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APPELLANTS

1.HARIDASAN EMBRANTHIRI, S/O ANANTHAN EMBRANTHIRI, RESIDING AT PADMALAYAM, THEVARKATTU MURI, VARAPPUZHA VILAGE

2. A.K.RADHAKRISHNAN EMBRANTHIRI S/0 ANANTHAN EMBRANTHIRI,IN- DO -

BY ADV. SRI.S.V.BALAKRISHNA IYER
SRI.P.B.KRISHNAN

RESPONDENT:

JANARDHANAN POTTY, S/O NARAYANAN POTTY RESIDING AT SATHYANARAYANA MANDIRAM NANTHYATTUKUNNAMKARA PARAVUR VILLAGE

BY ADV. SRI.VIJAYAN MANNALY

THIS APPEAL SUIT HAVING BEEN FINALLY HEARD ON 26-06-2007 ALONG WITH AS NO. 673 OF 2001 THE COURT ON 26/06/2007 DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR . J.

A.S No. 17 of 1998

&

A.S. No.673 of 2001

Dated this the 26th day of June 2007

JUDGMENT

The 1st defendant O.S. No. 758 of 1994 and the plantiff in O.S No. 310/1995 on the file of the Additional Subordinate Judge's Court North Paravur is the appellant in both these appeals. A.S. 17 of 1998 arises from the decree and judgment of the trial court in O.S. 310/1995. A.S. 673 of 2001 is filed against the decree and judgment passed in O.S. 758 of 1999.

2. The respondent in A.S 17 of 1998 filed O.S 310 of 1995for realisation of money. The defendants in that suit filed O.S 79/1993 before the Munsiff's Court Paravur against the respondent in A.S 17/1998 for realisation of money. That suit was originally decreed as exparte. Subsequently the said exparte decree was set aside and the suit was restored back to file and the same was withdrawn to Sub-Court Paravur where O.S.758/1994 was pending and renumbered as O.S. 310/1995 Both suits were consolidated and tried together and disposed by a common judgment. O.S. 758/1994 was decreed and O.S. 310/1995 was dismissed.

3. A.S. 17/1998

This appeal arises from the decree and judgment passed by the

court below decreeing O.S758 of 1994. The respondents filed the suit for recovery of Rs. 25,000/- on the following averments.

4. The respondent and appellants are close relatives. The 1st appellant who possessed a driving licence approached the respondent and collected an amount of Rs. 25,000/- promising to sell an autorikshaw bearing Registration No. KL7 5232. The appellants were not able to sell the vehicle to him They handed over two autorickshaws bearing registration No. KCE 6059 and KEF 3334 which belonged to one Kuriakose. According to the respondent these two autorickshaws were having substantial damages and the vehicles were not in a roadworthy condition and the appellants have no transferable title over the same, So the respondent insisted for the return of Rs. 25,000/- A mediation took place and in the presence of mediators, the appellants had agreed to take back the autorickshaws bearing Registration Nos. KCE 6059 and KEF 3334 and to return the 25,000/- with interest. But subsequently the respondent demanded repayment of the money. On 26-9-1994 the 1st appellant sent a post card admitting his liability and stating that if the respondent give his daughter on marriage to 1st appellant the amount of Rs. 25,000/- can be adjusted towards the dowry. But he did not repay the money or marry the daughter of the respondent. Hence the suit for money.

5. The appellants filed separate written statements. The relationshipwas admitted. It was contended that the 1st appellant was the owner of two autorickshaws bearing Regn. No. KEF 3334 and KCE 6059 and the respondent purchased the autorickshaws bearing registration No. KEF 3334 for 17,000/- and KCE 6059 for an amount of Rs. 21,000/-. It was also averred that the autorickshaw bearing registration No. KCE 6059 was covered with a hire purchase agreement and an amount of Rs. 8,000/- was due to the financier. The respondent had agreed to discharge the amount due to the financier. It was contended that the respondent purchased the vehicles after fully satisfying about the absolute title and right of the 1st appellant over the movables It was also contended that an amount of Rs. 4,500 was due to the respondent from the 1st appellant It was contended that the 1st appellant did not write any letter to the respondent The 2nd appellant filed a written statement contending that no amount was received by him and no amount was claimed from him It was also contended that he never agreed to repay any amount. It was also contended that he was only an attestor to the documents.

6. The 1st appellant filed O.S. 79/1993 against the respondent. It was avered that he was the owner of two autorickshaws bearing Regn. Nos KEF 3334 and KCE 6059 . The respondent purchased the autorickshaws bearing Regn No. KEF 3334 for a consideration of Rs.

17,000/- and the other one for a consideration of Rs. 21,000/- It was also averred that the vehicle bearing Regn. No. KCE 6059 was covered with a hire purchase agreement and an amount of Rs.8,000/- was due to the financier. To discharge the liability of the financier and paid only Rs. 8,000/- on the date of sale. He undertook the liability of paying the balance of Rs.4,500/- within a period of 6 months.

.7. The respondent had not paid balance of consideration even after the period of 6 months in spite of repeated demands Hence the suit for realisation of money.

8 Respondent filed written statement contending that plaintiff collected an amount of Rs. 25,000/- from him promising to sell an autorickshaw bearing registration No. KL 7 5232 owned by one Kuriakose. He did not sell that vehicle to the respondent. Subsequently when the respondent demanded repayment of the amount the plaintiff handed over two auto rickshaws bearing registration No. KEF 3334 and KCE 6059. It was contended that autorickshaw bearing Regn.No. bearing KCE 6059 was not in a roadworthy condition and was having substantial damages. It was Kept in a garriage at Peruvanam for effecting repairs. The vehicle was seized by its owner with the help of police. It was contended that the

respondent sustained a loss of Rs. 25,000/- and he had filed the suit for the realisation of that amount.

9. In O.S. 758/1994 on the side of plaintiffs PW1 to PW4 were examined. A1 to A6 proved and marked. On the side of the defendants B1 to B9 proved and marked and DW1 and DW2 were examined.

10. The learned Subordinate judge found that the 1st defendant in O.S 758/1994 received an amount of Rs. 25,000/- It was further found that the 1st defendant had no title over the two vehicles. which he gave to the plaintiff in that suit Hence a decree was passed in favour of the respondent allowing him to recover Rs 25,000/- from the defendants. The trial court disbelieved the case of the 1st appellant. that the respondent purchased authorickshaw and an amount of Rs. 4,500/- is still due to him as balance of sale consideration and dismissed that suit.

11. A.S 17/1998 was filed against the decree passed by the court below decreeing the suit filed by plaintiff in O.S. 758/1994. A.S. 673/2001 was originally filed as A.S. 170/97 before the Paravur Additional District court which was subsequently withdrawn to this court to be heard along with A.S. 17/1998. The learned counsel appearing for the appellants in both appeals has argued that there is absolutely no legal or acceptable

evidence to hold that the appellants owe an amount of Rs. 25,000/- to the respondent . It is contended that Exts A1, B1, B4 B5 coupled with the oral evidence of DW1 prove beyond any reasonable doubt that there was an outright . purchase of two autorickshaws bearing registration No. KCE 6059 and KEF 3334 by the respondent from the 1st appellant. It is argued that there is evidence to show that on account of non- payment to the amounts due to the financier the vehicle bearing Regn No. KCE 6059 was seized by them and the respondent alone was responsible for the sorry state of affairs. It is argued that there is absolutely no evidence available on record to show that what happened to the autorickshaw bearing registration No. KEF 3334 and hence the court below went wrong in decreeing the suit.

12. The case of the respondent in A.S 17/1998 was that the appellants collected an amount of Rs. 25,000/- from him promising him to sell an autorickshaw bearing registration No KL.7 5232 owned by one Kuriakose. Admittedly he had no case that there was an agreement between himself and Sri. Kuriakose. The only case put forward is that the appellants collected an amount of Rs. 25,000/- promising to purchase the autorickshaw belonging to Kuriakose. Admittedly that sale did not took place. It is an admitted fact that the respondent was given possession of

two autorickshaws bearing registration No. KCE 6059 and KEF3334 by the 1st appellant. It is admitted by the respondent that KCE 6059 was seized by the financier for non-payment of the amount due to him under a hire purchase agreement. What happened to the other vehicle is not discernible from the records. in Ext.A1issued for and on behalf of the respondent shows that there is unequivocal admission that these two vehicles were given to respondent for an amount of Rs. 25,000/- In Ext.B5 criminal complaint filed by the respondent also it is specifically admitted that possession of these two auto rikshaws were handed over to him. That fact is corroborated by Ext.B1 & B4. It is trite law that the sale of a motor vehicle which is a movable is governed by the provisions of Sale of Goods Act. It is not the registration certificate of a motor vehicle which confers ownership of the vehicle on a person . On the otherhand the registration certificate follows ownership of vehicle. In **Aliyar Kunju Vs. Subair khan (1984 K.L.T. 268)** this court is held as follows:-

> *On analysing the provisions of the Motor vehicles Act 1939 it can be seen that it is not the registration certificate of a motor vehicle which confers ownership of the owner on the otherhand the registration certificate follows the ownership and not vice versa. The transfer of ownership of a vehicle is a matter governed not by the provisions of the motor vehicles Act but by the provisions of the sale of Goods Act. Motor vehicle being a movable transfer of ownership takes effect from the date of the sale and not from any other date. As between the transferor and the transferee the sale is complete before the transfer of the*

registration certificate.

13. The evidence on record clearly shows that there was a concluded sale between the respondent and appellants. But the respondent has a further case the appellants had agreed to take back and return the amount of Rs. 25,000/-

14. The trial court did not consider whether the case pleaded by the respondent was true or not. If as a matter of fact there was an oral agreement to take back the two vehicles and return the money the appellants are bound to honour the same. So I shall consider whether there is any evidence to prove that fact.

15. The respondent had claimed that that the appellants in A.S. 17 of 1998 had received an amount of Rs.25000/- from him But there is absolutely no pleadings or evidence available on record to prove that the 2nd appellant had received any amount from the respondent. Ext.B1 & B4 are the two receipts under which the respondent purchased the two autorickshaws from the 1st appellant. Those two documents shows that the transaction was between the 1st appellant and the respondent. Ext.A1 is the notice issued on behalf of the respondent to the 1st appellant.

There is no statement in Ext.A1 notice to the effect that the 2nd appellant had received any amount. On the other hand the specific case put forward by the respondent was that it was the 1st appellant who collected the money from the respondent. It was further admitted that the 1st appellant had promised to return the amount. . The 2nd appellant is only an attestor to Exts B1 & B4. There is absolutely nothing on record to connect the 2nd appellant with the transaction. The trial court did not consider this aspect at all and passed a decree against the 2nd appellant also. The decree passed against the 2nd respondent is not supported by any pleadings or proof and the same liable to be set aside. I do so.

16. Now I shall consider the liability of the 1st appellant. In the written statement field by the 1st appellant It was contended that there was a concluded sale and thereafter he had no liability to repay the amount at all But the respondent had a case that the 1st appellant agreed to repay Rs. 25,000/- In paragraph 5 of the plaint it was specifically averred that the 1st appellant had written a letter undertaking to repay the 25,000/- Of course the 1st appellant in his written statement had denied it. The trial court after comparing the signature of the first appellant in Ext.A2 letter dated 26-9-1994 with his signatures in the vakalath, the complaint field by him and in the written statement filed in the connected case came to the

conclusion that Ext.A2 was written by the 1st appellant. There is an unequivocal admission in Ext.A2 to the effect that he had received 25,000/- It was also stated that he had no intention to cheat and he will repay that amount but he was not having enough cash at that time. In fact an offer is made in Ext.A2 letter to the effect that in case the respondent is willing to give his daughter in marriage to the 1st appellant the amount due to the respondent can be adjusted towards the dowry. I do not find any reason to disbelieve the case of the respondent that Ext.A2 letter was written by the 1st appellant . Ext.A2 was fully corroborated by oral evidence of Pw2 and PW3. PW2 had deposed that he was a witness to the transactions. He gave oral evidence to the affect that there was a subsequent agreement between the 1st appellant and the respondent by which the 1st appellant had agreed to repay an amount of Rs. 25,000/- . PW3 is an independent witness. He was a member of the Taluk Sabha at therelevant period. He gave evidence to the effect that the respondent had filed a complaint before the Taluk Sabha and the 1st appellant and the respondent were called to Taluk Sabha and before the Taluk Sabha the1st appelant has agreed to repay an amount of Rs. 25,000/- and admitted that an amount of Rs. 25,000/- was due from him to the respondent. PW3 had also deposed that before the Taluk Sabha appellant expressed his willingness to marry the daughter of the respondent. Taluk Sabha took a stand that

that is not the matter which comes within the purview of Taluk Sabha and referred the matter to the Circle inspector of Police. He was cross-examined at length but nothing was brought out to discredit his testimony. So the admission in Ext.A2, corroborated by the oral evidence of PW2 & PW3 clearly establishes that subsequent to the sale as per Ext.B1 and B4 the appellant had agreed to return an amount of Rs. 25,000/- to the respondent. Evidence also shows that the vehicle bearing registration No.KCE 6059 was seized by the financier and sold for an amount 4,000/- So it clearly establishes that the amount of Rs. 25,000/- was due from the 1st appellant to the respondent. There is nothing on record to show that was an agreement to pay 12% interest for that amount. So the respondent is not entitled to get any interest till the date of decree. From the date of decree he is entitiled to get interest at the rate of 6% percent per annum

17. In A.S 673/2001 the case put forward by the appellant was that an amount of Rs. 4,500/- is due to him as balance of consideration for the sale of autorickshaw bearing Registration No. KCE 6059 I have already found that the appellant had agreed to take that vehicle back and pay an amount of Rs. 25,000/- to the respondent. The evidence on record thus shows that the vehicle was actually seized by the financier So the

appellant is not entitled to get a decree for Rs. 4,500/- and that appeal is only to be dismissed.

18. In the result the appeals are disposed of in the following manner:-

A.S. 17/1998 is allowed in part The decree and judgment passed by the trial court against the 2nd appellant is hereby set aside. The suit so far as it relates to the 2nd appellant is dismissed. The decree in the suit in so far as it relates to the first appellant, passed by the trial court is modified. The respondent is entitled recover the amount of Rs 25,000 with interest at the rate of Rs 6% from the date of decree till the date of realisation.

A.S. 673 of 2001 is dismissed. Parties in both the appeals are directed to suffer their cost.

K.PADMANABHAN NAIR,JUDGE

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